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No. 82-77

In the Supreme Court of the United States

October Term, 1982

WILLIAM N. GRIFFIN, *et al.*,
Appellants,

VS.

BURNES E. SIMS, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF GEORGIA

BRIEF OF APPELLANTS IN OPPOSITION TO APPELLEES' MOTION TO DISMISS OR AFFIRM

HERBERT H. GRAY, III
(Counsel of Record)
K. MORGAN VARNER, III
VARNER, STEPHENS, WINGFIELD,
McINTYRE & HUMPHRIES
1000 Grant Building
Atlanta, Georgia 30303
404/522-2020
Attorneys for Appellants

E. L. MENSENDIEK, INC., 908 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

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Pursuant to Rule 16.5 of the Rules of this Court, Appellants respectfully file this Brief for the purpose of showing that Appellees' Motion to Dismiss or Affirm should not be granted. Appellees have not shown that the questions presented by this Appeal are not substantial. This Court should note jurisdiction of the instant Appeal and reverse the decision of the Supreme Court of Georgia.[1]

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1. 249 Ga. 293, 290 S.E.2d 433 (1982).

INTRODUCTORY STATEMENT

The Appellees' Motion to Dismiss or Affirm is marked by the same confusion of issues that plagued the Georgia Supreme Court's reasoning in this case. The issue is *not* territorial uniformity; rather, the issue is the rational basis necessary to support a classification, territorial or otherwise, so as to satisfy the requirements of the Fourteenth Amendment.

The question presented by this Appeal is so basic that it apparently is easily confused: Does the Fourteenth Amendment require that the classification of one county in a State separate and apart from all other counties in that State have a rational basis? Even a cursory review of the law of equal protection reveals conclusively that all state law classifications, including territorial classifications, must have a rational basis to withstand Fourteenth Amendment scrutiny.

Because Appellees make a number of erroneous assumptions and interpretations, Appellees' Motion is not so much a refutation of this fundamental principle as it is a confusion of it. Accordingly, this Brief will assist in resolving any such confusion created by Appellees' argument.

ARGUMENT AND CITATION OF AUTHORITY

Appellees' Motion Ignores The Basic Component Of Equal Protection: The Rational Basis Requirement

In their Motion Appellees have attempted to have this Court focus on the concept of "uniformity". Appellees argue that since territorial uniformity is not required of a state law, this Court need not examine the issues in this Appeal.[2] In making this argument, Appellees are overlooking the basic component of the law of equal protection: The requirement that all classifications must have a rational basis in order to satisfy the equal protection guarantee of the Fourteenth Amendment.

Contrary to the implication of Appellees' Motion, Appellants have never argued that territorial uniformity is necessary. Indeed, Appellants recognize that this Court has held on numerous occasions that territorial uniformity is not required and that legislatures may make territorial classifications which cause people in different areas of the same State to be treated differently.[3] This point is not in dispute.

Appellants do argue, however, that once a territorial classification is created by a legislature, such classification must have a rational basis, just as any other type of classification must have a rational basis, in order to satisfy the equal protection guarantee of the Fourteenth Amendment.[4] In other words, there must be a material and significant

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2. Appellees' Motion, p. 5.

3. *Griffin v. School Board of Prince Edward County*, 377 U.S. 218, 84 S. Ct. 1226, 12 L. Ed.2d 256 (1964); *Salsburg v. Maryland*, 346 U.S. 545, 74 S. Ct. 20, 98 L. Ed. 281 (1954).

4. Jurisdictional Statement at 10-16.

reason for treating those persons within the classified territory differently from those outside such territory.[5]

Appellees' confusion on this basic point is evidenced by their statement that the Proposed Amendment does not violate the equal protection clause "just because" it levies a tax in one county which is not levied in the remaining 158 counties in Georgia.[6] Appellants agree that the Proposed Amendment does not violate the equal protection clause "just because" it creates a territorial classification for the purpose of levying an additional tax. As found by the Trial Court, *it violates the equal protection clause because the territorial classification which it creates has no rational basis.*[7]

Appellees further evidence their confusion of a uniformity requirement with the requirement for a rational basis by their statements that, if accepted by this Court, Appellants' arguments would destroy home rule for cities and counties, outlaw local legislation, and place in doubt the validity of Georgia's local option liquor law.[8] By making such statements, Appellees are overlooking the obvious fact that neither Home Rule provisions nor local option liquor laws may be attacked as creating unconstitutional classifications because neither the Home Rule provisions nor such local option liquor laws create any classifications at all.

Under the terms of the Home Rule provisions,[9] *each* county and *each* city in Georgia is empowered to adopt "clearly reasonable ordinances, resolutions or regula-

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5. *Id.*
6. Appellees' Motion, p. 3.
7. Jurisdictional Statement, pp. A20-A23.
8. Appellees' Motion, pp. 3-4.
9. *Ga. Code* §2-5901; *Ga. Code* §69-1017.

tions."[10] Thus such provisions *per se* have universal application to *all* cities and counties within the State and do not operate selectively in any one city or county. Consequently no territorial classifications are created by Home Rule provisions.

Similarly, the local option liquor laws are of universal, statewide application.[11] If *any* county or city in Georgia wishes to legalize the sale of alcoholic beverages within its corporate limits, it may do so, providing it follows the procedures set forth in the applicable statutes.[12] The local option statutes do not, therefore select any certain counties or cities for the legalization of the sale of alcoholic beverages, and therefore do not create any territorial classification.

Appellees urge that requiring a rational basis for territorial classifications would end local legislation in Georgia. To a certain extent, Appellees are correct. Local "sweetheart" legislation which singles out individuals in certain territories in this State for especially advantageous or disadvantageous treatment *for no rational reason* would be a thing of the past, as well it should be since such "sweetheart" legislation denies equal protection of the laws.[13] Not affected in any way, however, would be local legislation based on sound, material distinctions and differences between the needs of persons situated in different areas of the State. It is the latter type of local legislation which is proper, not the "pork barrel" type of legis-

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10. *Id.*

11. *Ga. Code* §5A-2302; *Ga. Code* §5A-4302, 4303; *Ga. Code* §5A-5301.

12. *Id.*

13. Jurisdictional Statement, pp. 11-16.

lation which arbitrarily affects only those citizens residing in one county in Georgia.

Despite the apparent confusion of Appellees, Appellants contend that the arguments of Appellants are logical and uncomplicated. The equal protection guarantee of the Fourteenth Amendment requires that territorial classifications have a rational basis. If there has been no classification created, as in the case of the Home Rule provisions and the local option liquor laws, then the issue is moot. If, however, a classification is created which has a rational basis, then the legislation creating such classification should be upheld. If such classification is not rationally based, then the legislation must fall as violative of the Fourteenth Amendment. In the case *sub judice*, the legislation creating the classification, "the Proposed Amendment," was correctly found by the Trial Court to have no rational basis and consequently to be unconstitutional.[14] The Supreme Court of Georgia, however, decided that such classification was constitutional regardless of the fact that it had no rational basis.[15] Such decision of the Supreme Court of Georgia must be reversed.

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14. Jurisdictional Statement, pp. A20-25.
15. Jurisdictional Statement, p. 9; p. A5.

CONCLUSION

For the reasons herein stated, Appellants respectfully show this Court that Appellees' Motion to Dismiss or Affirm is totally devoid of merit and should not be granted. Accordingly, this Court should note jurisdiction of this Appeal and review and reverse the decision of the Supreme Court of Georgia.

Respectfully submitted,

HERBERT H. GRAY, III
(Counsel of Record)
K. MORGAN VARNER, III
VARNER, STEPHENS, WINGFIELD,
McINTYRE & HUMPHRIES
1000 Grant Building
Atlanta, Georgia 30303
404/522-2020
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I have this day served all parties required to be served in this action with a copy of the within and foregoing Brief In Opposition to Appellees' Motion to Dismiss or Affirm by placing copies of same in the United States Mail, first class postage prepaid addressed to each Counsel for Appellees Burnes E. Sims, James Holcomb, Charles English, Fred Holbrooks, Martha Sikes, Individually and as Members of The Board of Education of Habersham County, and The Board of Education of Habersham County, Georgia, as follows:

E. Freeman Leverett, Esq.
Heard, Leverett & Adams, P.C.
P. O. Drawer 399
Elberton, Georgia 30635

and

Steven D. Frankum, Esq.
Adams, Ellard & Frankum, P.C.
P. O. Box 82
Clarkesville, Georgia 30523

and addressed to the Attorney General of Georgia as follows:

Honorable Michael J. Bowers
Attorney General of Georgia
132 Judicial Building
Atlanta, Georgia 30334

This 31st day of August, 1982.

.....

HERBERT H. GRAY, III
Attorney for Appellants